Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

_____ * _____

Robert H. Keeler

Petitioner,

v.

Academy of American Franciscan History, Inc.

Respondent,

_____ * _____

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

_____ * _____

PETITION FOR A WRIT OF CERTIORARI

_____ * _____

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52 pgs

QUESTIONS PRESENTED

ISSUES:

(a) Whether the Circuit Court of Montgomery County Maryland had Subject Matter Jurisdiction over the Petitioner in Cases 49199 and 55887?

(b) Whether the same court issued and served due process notice in Case 49199?

(c) Whether the Petitioner was personally served in Case No. 49199?

(d) Whether a Judgment against the Petitioner was ever enrolled by the court or a "consent judgment" adjudicated by the court and signed by a judge?

(e) Whether an Appeals Court can ignore the issue of subject matter jurisdiction and thereby violate the law as ordered by the Supreme Court?

(f) Whether the Circuit Court, after granting a hearing and sending out the notices for same, has the right to cancel the hearing and strike the motion?

(g) Whether the partnership charging orders garnishing the Petitioners' property abridge Due Process and Equal Protection Clauses, Article III, and Separation of Powers Doctrine because they issued without due process debtor

notice; garnished Petitioners' partnership and private property by private process instead of by sheriff levy through a Writ of Execution signed by a Judge; and because these court orders were signed by a court clerk using a rubber stamp, bearing a judicial signature, and initialed by the clerk at to form and content, without judicial review, were issued prior to a "consent judgment", all of which occurred without the court having a single hearing on this matter.

RESTATEMENT OF THE ISSUES:

(1) Can the mere passage of time remedy:

(a) lack of subject matter jurisdiction?

(b) lack of due process notice by the court clerk?

(c) lack of service upon the Petitioner?

(d) lack of an enrolled judgment or an adjudicated "consent judgment" signed by a judge and issued against the Petitioner?

(e) canceling a hearing after the notices have been sent and striking from the record the Petitioner's motion?

(f) unconstitutional charging orders, issued before a non-adjudicated, "consent judgment", rubber

stamped with a judges signature, by a clerk, and initialed as to form and content, by the clerk, without judicial review?

(g) all of the above was done without any court holding a single hearing on any of these issues?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED .....i, ii, iii

PARTIES TO THE PROCEEDING..... iv

TABLE OF AUTHORITIES.....vi, vii, viii, ix, x, xi

MARYLAND RULES.....x

CONSTITUTION PROVISIONS INVOLVED.....x, xi

OPINIONS BELOW.....xi

JURISDICTION.....xi

APPENDIX TABLE OF CONTENTS.....App. A

INTRODUCTION, STATEMENT OF FACTS AND

COURSE OF PROCEEDINGS BELOW.....1

REASONS FOR GRANTING WRIT..... 10

CONCLUSION..... 30

A. THE ISSUE PRESENTED HAS BROAD IMPORTANCE..... 11

ISSUE: May a court, without Subject Matter Jurisdiction, without sending Notice of a right to defend, without Proof of Service, without an enrolled judgment, or judgment order signed by a judge, issue valid charging orders signed by a clerk using a rubber stamp bearing a judicial signature, without judicial review, to be used to confiscate millions of dollars from the Petitioner, all without the benefit of a single hearing ? Does the passage of time remedy these unconstitutional acts?

TABLE OF AUTHORITIES

Cases Page(s)

GRIFFIN v. ILLINOIS,
351 U.S. [405. S.958, 960] 12, 18, 590.....6

McKANE v. DURSTON,
153 U.S. 684, 687-688, 914-915.....6

DOUGLAS v. CALIFORNIA,
372 U.S. 353.....6

MANSFIEL, C. & L.M.R. Co. v. SWAN,
111 U.S. 379, 382 (1984).....7

CALIFORNIA v. LaRUE,
409 U.S. 109 (1972).....7

AMERICAN FIRE AND CASULTY Co. v. FINN,
341 U.S. 6, 17-18 (1951).....7

FREEMAN v. McBROOM,
56 Ala. 601, 56 So. 2d 625.....8

CITY OF BIRMINGHAM v. REED,
35 Ala. App. 31, 44 So. 2d 607.....8

MURPHY v. LOUISVILLE & N.R. Co.,
258 Ala. 138, 61 So. 2d 3.....8

CRUMP v. KNIGHT,
2m, 11 Ala. 943.....8

FIFE v. PIONEER LUMBER Co.,
237 Ala. 92, 185 So. 759.....8
COBBS v. NORVILLE,
227 Ala. 621, 151 So. 576.....8
STATE OF MD. V. BALTIMORE RADIO SHOW,
338 U.S. 912 (1950).....8
STOLL v. GOTTLIEB,
305 U.S. 165, 171-172 (1938).....8
HERITAGE HOTEL ,
160 B.R. at 378.....9
BURKEY LUMBER Co. O
GRAND JUNCTION, Colo.,
149 B.R. 177, 180 (Bankr. D. Colo. 1993).....9
MOMENTUM MANUFACTURING Corp.
25 F. 3d 1132, 1136 (2ND Cir. 1994).....9
TUMEY v. OHIO,
273 U.S. 510, 47 S. Ct. 437, 50 A.L.R. 1243.....10
OFFUT v. UNITIED STATES,
348 U.S. 11, 14,.....11
In re MURCHISON,
349 U.S. 133, 136 (1955).....11
In re GAULT
387 U.S. 1, 26 (1967).....11

DOWBROW v. DOWBROW,
50 Md. App. 465, 471, 439 A. 2d 596 (1982).....12
WISE-JONES v. JONES,
117 Md. App. 489, 700 A. 2D 852 (1997).....12
DAVIS v. WENCHSLER,
263 U.S. 22, 24-25, 14.....13
Cf. MARYLAND v. BALTIMORE
RADIO SHOW, INC.,
338 U.S. 912, 917-918, 254-255 (1950).....13, 14
MINNICK v. CALIFORNIA DEPT. OF CORRECT.,
452 U.S. 105, 122-127, 2220-23, 68 L. Ed. 2D 706
(1981).....14
MILLIKEN v. MEYER,
311 U.S 457.....15
GRANNIS v. ORDEAN,
234, U.S. 385.....15, 19
PRIEST v. LAS VEGAS,
232 U.S. 604.....15, 19
ROLLER v. HOLLY,
176 U.S. 398.....15, 19
MULLANE v. CENTRAL,
[371 U.S. 208, 212].....15
HANOVER TRUST Co.,339 U.S. 306, 314.....15

PRINCE v. FROST JOHNSON LUMBER Co.,
Tex. Civil App. 250 S.W. 785, 789.....17
BELCHER v. COBB,
169 N.C. 659, 56 S.E. 600, 602.....17
UNITED STATES v. SWIFT & Co.,
286 U.S. 106, 115, 52 S. Ct. 460, 362.....18
BODDIE V. CONNECTICUT,
401 U.S. 371, 378 (1971).....19
MILLIKEN v. MEYER,
311 U.S. 457, 463 (1940).....19, 20
LAMBERT v. CALIFORNIA, 355 U.S. 225, 228...19, 20
SHROEDER v. CITY OF NEW YORK,
371 U.S. 208 (1962).....20
INTERNATIONAL SHOE CO. v. WASHINGTON,
326 U.S. 310, 316 (1945).....20
TULSA PROFESSIONAL COLLECTION SERVICES,
INC. v. POPE,485 U.S. 478, 486 (1988).....21
FIELD v. CLARK,
143 U.S. 649, 692 (1892)..... 24
LEVI,
SOME ASPECTS OF SEPERATION OF POWERS,
76 Colum. L. REV. 385-386 (1976).....24

AIRPORTS AUTH. v. CITIZENS
FOR NOISE ABATEMENT,
501 U.S. 252 (1991) 01 U.S. 252.....25

BUCKLEY v. VALEO,
424 U.S. 1 (1976).....25

MORRISON v. OLSON,
487 U.S. 654, 603 (1988).....25

DUKE POWER Co. v. CAROLINA
ENVIROMENTAL STUDY GROUP, INC.,
438 U.S. 59, 79 Pp. 935-936.....25

FLEISHER v. FLEISHER, Co.,
60 Md. App. 565, 571 (1984).....28

MARYLAND RULES: **Page(s)**

Rule 2-611.....1, 4, 8, 16
Rule 2-641.....1
Rule 2-651.....3
Rule 2-535.....4, 6
Rule 2-646.....15

CONSTITUTIONAL PROVISIONS INVOLVED

Article 1 Section(s) 1.....23

Article III under the Separation of Powers Doctrine.....14, 21, 22, 23, 24, 27, 30

Due Process clause under the 5th and 14th Amendments to the U.S. Constitution.....14, 16, 19, 21, 23, 27, 30

Equal Protection guarantee under the 14th Amendment to the U.S. Constitution.....9, 10, 11, 14, 17, 18, 19, 23, 27, 30

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OPINIONS BELOW

The Order of the Court of Appeals of Maryland appears at Appendix.....**App. B**

The unpublished opinion of the Court of Special Appeals of Maryland appears at .....**App. C**

The Order of the Circuit Court for Montgomery County, Maryland appears at .....**App. J**

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JURISDICTION

The judgment of the Maryland Court of Appeals was rendered on March 8, 2002 and became final thereafter. This Court has jurisdiction.

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INTRODUCTION, STATEMENT OF FACTS AND COURSE 0F PROCEEDINGS BELOW

This petition stems from a confessed judgment complaint filed by Respondents October 17, 1989. In 1989 Petitioner's Saratoga Development Company purchased 14 acres of residential land for a price of $7.75 million. Of that amount, $3.75 million was paid in cash and a $4 million confessed judgment note secured by a deed of trust was given by Saratoga Development Corporation to Respondent. Without giving Petitioners an opportunity to cure, after a default of only a few days, due to a planning delay, and in derogation of the note's right of Petitioner to notice, and to cure, on October 17th of 1989, Respondent filed confessed judgment complaint 49199, without attorney affidavit sworn before a notary, in the form required by Maryland Rule 2-611, and without filing the deed of trust also required. Then, Respondent received from the clerk "notices" of an unknown kind for service.

No copies of what was given are in the file record. Respondent served no notices on Petitioners, and

neither did the court clerk provide Petitioners with notice of their right to answer and move to vacate the confessed judgment. Respondents entered judgment for $4 million plus $600,000 attorney fees. Petitioner negotiated out of court to reduce the attorney fee, unaware that he had the right to move to open and vacate the judgment. By stipulation entered on the record November 28, 1989, dated November 27, 1989, the stipulation said that the attorney fee would be reduced to $400,000 and removed from Case No. 49199 to Case No. 55887. Only one of the parties signed this stipulation.

On December 20, 1989, a Partnership Charging Order garnishing Petitioner Gaither Road partnership property and interests, prepared by Respondent's attorney, was submitted to the court for judicial signature. Its language instructed the partners to pay Petitioner's partnership interest directly to Respondent or be subject to court sanction. It was served on Petitioner's Gaither Road partnership by private process instead of by Rule 2-641 Writ of Execution and levy by the sheriff as is required by the Maryland garnishment rules. As of December 20,

1989, Respondent had not filed a return of service, which rule 2-651 requires before a property garnishment order can issue from the court. This proposed order was reviewed and signed by a court clerk using a rubber stamp bearing a judicial signature. It contained no debtor notice. No copy of the confessed judgments or its attachments was attached to the Order and no copies of what was served by private process, was filed with the returns. Thereafter, several similar orders were served on all of Petitioner's partnerships, garnishing his property to his economic injury. Respondent filed a second stipulation on the record on January 22, 1990. Its language was identical as that in Docket 6, except the "November 27, 1989" date was changed to November 17, 1989. Docket 29 says that a judgment was entered from the stipulation, but no such judgment signed by a judge appears in the court record.

Eventually these charging orders literately forced Petitioner out of business and into Chapter 7 bankruptcy on December 20, 1999 where Respondent was listed as an unsecured creditor. Petitioner was discharged in bankruptcy on July 24, 2000. After

bankruptcy filing, Gaither Road partnership obtained more money for distribution. Gaither road and Petitioner moved the U.S. Bankruptcy Court to re-open to determine to whom this money should be paid. A hearing was held and a decision was taken Sub Curia. Before the decision was rendered, Petitioner discovered the irregularities complained of here and, on January 17, 2001, filed in Montgomery County Circuit Court of Maryland, under Rule 2-611 and Rule 2-535, a Petition asking for an emergency hearing to open Case No. 49199 and Case No. 55887 for Fraud, Irregularity, Mistake, Illegality, Lack of Subject Matter Jurisdiction and Lack of Due Process Notice, requesting a charging order stay.

The Circuit Court denied the hearing on January17, 2001; holding jurisdiction was in the U.S. Bankruptcy. The Federal Court ruled it did not have jurisdiction to adjudicate the validity of the Montgomery County charging orders. Petitioner filed a Reconsideration Motion January 29, 2001 along with the federal opinion, which was granted. On February 2, 2001 Respondent filed a strike motion, saying all of the issues raised by Petitioner had already been decided by the

opinions handed down by the Court of Special Appeals. Petitioner opposed it, saying neither the Court of Special Appeals, nor the Circuit Court, or any Court elsewhere had ever adjudicated lack of subject matter jurisdiction, lack of constitutional due process, lack of in personam jurisdiction over Petitioner and if the charging orders were legal under Maryland law or rule, or the U.S. Constitution. If they were not legal and constitutional, then all Partnership and other Orders, agreements, decisions, interpleader actions, stipulations and agreements arising under them are void, illegal, unconstitutional and of no legal effect. The Court had both the jurisdiction and the power and duty to determine whether or not No. 49199 and No. 55887 were final enrolled judgments. On March 7, 2001, the Court granted Petitioners' Motion For Reconsideration and the right to a hearing on the motion to open, vacate and set aside the confessed judgment, and to a hearing on the strike motion. Hearing notices went out on March 8, 2001. On April 4, 2001 the court administratively granted Respondents' strike motion without according Petitioners their hearing right. On the same date the court also struck the Motion to Reconsider. His order claimed he reviewed the entire record. He could not have. The record shows the Points and Authorities were in the court evidence room, not the file, where they, according to the record, stayed from

January 17, 2001 until the time the appeal was filed. Appeal was filed in the Special Court of Appeals of Maryland on July 23, 2001 (Appeal No. 02960).

The Court of Special Appeals of Maryland rendered its decision on November 27, 2001. This court reached an unjust decision, ruling that 12 years had lapsed since these judgments were filed, the time for attacking them had passed, and that it had been converted into a "consent judgment" and since whatever merit may have existed 12 years ago, is now governed by Maryland rule 2-535(b).

While the U.S. constitution contains no requirement that a State provide appellate courts or even that there be a right to appellate review, Griffin v. Illinois, 351 U.S. [405. S.958, 960] 12, 18, 590; McKane v. Durston, 153 U.S.684, 687-688, 914-915, once appellate review has been provided a State may not deny it arbitrarily or capriciously without violating the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendment. Douglas v. California, 372 U.S. 353; Burns v. Ohio, 360 U.S. 252; Griffin v. Illinois, supra.

The appeals court below rendered an opinion on

inadequate grounds and ignored the lack of subject matter jurisdiction, due process and other issues, including the garnishment of Petitioners' property by charging orders signed by a clerk, using a rubber stamp bearing a judicial signature, and approving them as to form and content by his own initial, all without judicial review.

Lack of subject matter jurisdiction is fundamental. "[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception. It requires the court, of its own motion, to deny jurisdiction if it cannot be found in the exercise of its appellate power, or in any other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." Mansfield, C. & L.M.R. Co. v. Swan, 111 U.S. 379, 382 (1884). No action of the parties can confer subject matter jurisdiction upon a state, or federal court, and consent of the parties is irrelevant, California v. LaRue, 409 U.S. 109 (1972), nor to principles of estoppel inherent in Respondent's res judicata claims apply. American Fire and Casualty Co. v. Finn, 341 U.S. 6, 17-18 (1951). Lack of subject

matter jurisdiction cannot be cured by the parties January 22, 1990 stipulation. 56 Ala. 601, 56 So.2d 625; Freemen v. McBroom. Time does not wipe out lack of subject matter jurisdiction. It is always open to inquiry, City of Birmingham v. Reed, 35 Ala. App. 31, 44 So.2d 607; Murphy v. Louisville & N.R. Co., 258 Ala. 138, 61 So.2d 3; Crump v. Knight, 2m, 11 Ala. 943, and a party or his privies may assail such a judgment. Fife v. Pioneer Lumber Co., 237 Ala. 92, 185 So. 759; Cobbs v. Norville, 227 Ala. 621, 151 So. 576." As the U.S. Supreme Court pointed out in STATE OF MD. v. BALTIMORE RADIO SHOW, 338 U.S. 912 (1950), the validity of an order of a court depends upon that court's having jurisdiction over both the subject matter and the parties, as quoted in Stoll v. Gottlieb, 305 U.S. 165, 171-172 (1938). It was error to put so much weight on the passage of time, as the appeals court did below. Here the record and filed judgment discloses a lack of subject matter jurisdiction because the filed judgments in 49199 and 55887 do not strictly comply with Rule 2-611 by lack of an attorney affidavit under notary oath, in proper form, and because the Respondent filed the Deed of

Trust Note instead of the Trust Deed as required. By doing so, the attorney for the Respondent (who was also the trustee) earned a $400,000.00 attorney fee instead of a $250.00 trustee fee. The record below shows that the Petitioner was a victim of fraud and misrepresentation by Respondent's attorney/trustee, who was dealing from self-interest. Petitioner was ignorant of the true facts and he relied on the attorney/trustee's conduct, to his injury. Heritage Hotel, 160 B.R. at 378; In re Burkey Lumber Co. of Grand Junction, Colo., 149 B.R. 177, 180 (Bankr. D. Colo. 1993); see also In re Momentum Manufacturing Corp., 25 F.3d 1132, 1136 (2nd Cir. 1994). At no time did Petitioner voluntarily or intentionally relinquish a known claim right, and unknowing consent, due to lack of due process notice, will not allow res judicata to bar this litigation. Conflict of interest usually impairs the client; in this case it impaired the Petitioner personally as well as the Respondent. The record will show that the attorney/trustee received in excess of $500,000.00, while the Respondent received the sum of $19, 235.71.

Then the court below ruled that there was no

showing of extrinsic fraud, mistake, or irregularity by the Petitioner, that if ever existed, was cured by the "consent judgment'. This decision lacks a basis of fact in the record, which, to the contrary, is full of fraud and procedure and process irregularity of Constitutional dimensions. The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since the Magna Carta. It is protected by the liberty guaranteed by the Fourteenth Amendment. That is why the Supreme Court has outlawed a judicial system, which does not provide disinterested judges, Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437, 50 A.L.R. 1243.

Petitioner filed a Petition No. 619 for Writ of Certiorari in the Court of Appeals of Maryland on Jan 11, 2002. On March 8, 2002, the Court of Appeals refused to grant certiorari on the grounds that it would not be in the Publics interest. From this denial, the Petitioner has filed with this Court in a timely manner

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REASONS FOR GRANTING THE WRIT

Review by this Court of the decision of the Court

of Appeals of Maryland and the Maryland Special Court of Appeals is desirable and in the Public interest for the following reasons:

A. THE ISSUES PRESENTED HAVE BROAD IMPORTANCE

An unjust result was reached in the Court of Special appeals. Certiorari must be granted to rectify this error. "[T]o perform its high function in the best way "justice must satisfy not only the appearance of justice." Offut v. United States, 348 U.S. 11. 14. "In re Murchison, 349 U.S. 133, 136 (1955); cf. In re Gault, 387 U.S. 1, 26 (1967), it must be just." The Court of special Appeals Opinion was not.

Granting certiorari would mean a fair and impartial and full review of important public policy issue affecting all Maryland debtors signing promissory notes with confessed judgment clauses in them. These debtors, mostly the working poor, are still subject to property garnishment and confiscation, by judgment creditors using circuit court policies, practices and procedures. These procedures, in the Montgomery County Circuit Court, allow court clerks to sign judicial property garnishment orders without

judicial review, using a rubber stamp, bearing a judge's signature. This unconstitutionally abridges a judge's powers under Article III of the constitution, as well as the Separation of Powers doctrine, because a judge cannot delegate these powers. Nor, can those powers, be taken from him by administrative personnel. The rubber-stamping of judges signatures on court documents is a "way of doing business" to save time, in the Montgomery County Circuit Court. In Dowbrow v. Dowbrow, 50 Md. App.465, 471, 439 A.2d 596 (1982) the court commented on the use of signature stamps and admonished the trial court:

"We suggest the immediate end to the use of facsimile signatures on original orders and decrees. Without the original signature of the reviewing judge there is nothing in the record to support the conclusion that the Chancellor ever personally saw the order". In Wise-Jones v. Jones, 117 Md. App. 489, 700 A. 2d 852 (1997) The Court of Special Appeals went on to say:

"The use of "signature stamps" to affix judicial signatures is not only questionable at the least, and inappropriate generally, it may be highly risky as

well. If the stamp exits, there is a risk that it will be obtained by unauthorized persons, and used by them to execute unauthorized orders, ie., commitments, releases, judgments, dismissals. The potential for mischief is unlimited."

And that is exactly what happened in this case. However, when the appeals court was faced with this issue, and other issues of due process and equal protection, the Court's decision was to remain silent on these important constitutional issues raised on appeal.

"Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice...[I]t is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way." Davis v. Wenchsler, 263 U.S. 22, 24-25, 14. Certiorari granted by the Supreme Court is appropriate, and necessary, because in failing to rule on the jurisdiction issues the Court of Special Appeals did not faithfully and fully perform its responsibilities. Cf. Maryland v.

Baltimore Radio Show, Inc., 338 U.S. 912, 917-918, 254-255 (1950).

Article III of the Constitution and State jurisdictional statutes enacted by congress as well as the state legislature vest this state's appellate courts with authority to decide federal questions. The federal questions in Petitioner's appeal must be decided to resolve an actual case or controversy. See e.g., Minnick v. California Department of Corrections, 452 U.S. 105, 122-127, 2220-23, 68 L. Ed. 2d 706 (1981) namely the Due Process issues of Lack of Subject Matter Jurisdiction and Due Process Notice, and the other statutes and rules claimed unconstitutional, especially the rubber-stamping of judicial signatures to court Orders without judicial review.

The doctrine of finality underpinning the appeals decision below is outweighed by the more compelling considerations of lack of subject matter jurisdiction; violation of Petitioners protected constitutional Due Process rights to a fair and impartial judiciary; violation of Article III and the Separation of Powers Doctrine through court clerk use of rubber stamps bearing a judicial signature to sign Partnership

Charging Orders garnishing Petitioner's partnership property levied without writ of execution by sheriff and or debtor notice of a right to a hearing in violation of law and statute. (Rule 2-646)

In stating that public policy needs to have judgments that are final, the appeals court below failed to take into consideration that "[a] elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457; Grannis v. Ordean, 234 U.S. 385; Priest v. Las Vegas, 232 U.S. 604; Roller v. Holly, 176 U.S. 398." Mullane v. Central [371 U.S. 208, 212] Hanover Tr. Co., 339 U.S. 306, 314. Petitioner was never accorded this Due Process notice or hearing, and Respondents helped conceal these rights from Petitioner to prevent a trial on its merits. Petitioner is entitled to move to open the confessed judgment even 12 years later, and to have it stricken from the record if the court has no subject matter jurisdiction over it, or if the partnership

charging orders are unconstitutional on their face, and as executed and signed. The record clearly shows that notice, under Rule 2-611, required to be sent to Petitioner, was never sent by the court clerk; that Petitioner was not served notice by Respondents; that Petitioner never received notice of his right to a hearing when his partnership property was garnished by the charging orders that were rubber-stamped by a clerk, all of which is a violation of Petitioner's protected 14th Amendment due process rights, making these charging orders void and unconstitutional.

The Appeals Court below limited "Irregularity" must be process or procedure, or jurisdictional. Fraud must be "extrinsic". However, in error, and unsubstantiated by the record replete with irregularities, the Appeals Court found insufficient evidence of fraud, or mistake, or irregularities sufficient to open the judgment. The Court said that if any procedure or process claims, existed at all, they existed 12 years ago. Since it found the matter was converted into a "consent judgment," the Court of Special Appeals found this "judgment" cured "all". It

does not. Petitioner is unable to find a consent order on the record despite the fact that docket entry # 29 says there is one. And the Court below said Petitioners' claims were "washed away" by time, because, they had not before, been raised by Petitioner. Since notice was concealed from Petitioner, this rationale does not hold the water to "wash away" the Petitioner's claims. The record itself gives no evidence of any notice sent to Petitioner. When Petitioner discovered the fraud and violation of his due process rights in 2001, he acted immediately to try and vindicate them.

Nor is the stipulation of January 22, 1990 a "consent judgment". To be a "consent judgment" the stipulation would have to be entered upon the record with the sanction and approval of the court, and be ordered, to be recorded, through entry of a judicially signed order to give it effect as a judgment. Prince v. Frost Johnson Lumber Co. Tex. Civil App. 250 S.W. 785, 789; Belcher v. Cobb, 169 N.C. 659, 56 S.E. 600, 602. No such judge signed order exits in the record file. A consent judgment is a judicial function and an exercise of the judicial power to render judgment on

consent, which is a judicial act. United States v. Swift & Co., 286 U.S. 106, 115, 52 S.Ct. 460, 362. And, the stipulation of January 22, 1990 is tainted with fraud. It contains a different date of signing then when it was originally filed on November 28, 1989 (dated November 27, 1989). The date was changed to November 17, 1989 in an attempt to make it comply with the rules. Docket 6 and 28.

The appeals court below also erred and abused its discretion by failing to recognize that the Gaither Road and other partnership orders issued by the court clerk under a rubber stamp bearing a judicial signature issued on December 20, 1989 are unconstitutional. An "irregular" process or procedure, meriting the opening of the judgment. These garnishment orders of December 20th preceded the January 22, 1990 date the appeals court below said the "judgment" became a legal "consent judgment" and cured all procedural and process defects. By that date the "judgment" had already dissolved under the rules because no return of service had been filed within 30 days of its entry. The Gaither Road Partnership Order is void and the "judgment" may be

opened to strike it from the record.

In reaching its opinion, the appeals court erred by ignoring Petitioner's protected constitutional property rights, of which, he may not be divested in a manner violating Due Process under the United States Constitution's 14th Amendment. Due Process requires reasonable notice and an opportunity to be heard, Boddie v. Connecticut, 401 U.S. 371, 378 (1971). There is no such debtor notice in the Gaither road and other partnership charging orders, and this defect plus the rubber-stamped judicial signature makes them unconstitutional. Nor has the Petitioner been afforded the opportunity to present his objections in a court hearing, Milliken v. Meyer, 311 U.S. 457; Grannis v. Oedean, 234 U.S. 385; Priest v. Las Vegas, 232 U.S. 604; Roller v. Holly, 176 U.S. 398, and he is entitled to do so now, to stop further harm. Petitioner has already paid over $2 million cash under invalid and unconstitutional partnership charging orders.

The Due Process clause of the 14th Amendment gives Petitioner the right to actual notice and an opportunity to be heard before, his property can be seized by a creditor. Lambert v. California, 355 U.S.

225, 228. Substantial justice can now only be done if certiorari is granted to the Petitioner. "[T]raditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940) have been offended by the failure of the Court of Special Appeals to address these constitutional questions, which according to SHROEDER v. CITY OF NEW YORK, 371 U.S. 208 (1962) are constitutionally protected property interests. Certiorari must be granted and these questions must be addressed, particularly the partnership charging orders signed by a court clerk with a rubber stamp bearing judicial signatures. This court clerk, literally, rubber-stamped the Petitioner into bankruptcy. These rubber-stamped charging orders are void and unconstitutional. The United States Supreme Court should grant certiorari to address this important question. To do otherwise is to abrogate the power of the judiciary in an unconstitutional manner, since the very failure to act on appeal to fully and fairly address this issue, now that the Court of Special Appeals has avoided it, is to

abridge the separation of powers in a continuing, impermissible manner.

An administrative clerk's signing of the Gaither Road and other partnership charging orders, with a rubber stamp bearing a judicial signature, without judicial review, to allow a judgment creditor to garnish Petitioner's partnership property directly, without a levy by the sheriff, through Writ of Execution, violates Maryland statute, Article III of the constitution, the 14th Amendment Due Process Clause, and is an irregular process or procedure. It is the levying of a debtor's real property, without due process prior notice, of the right to a hearing, due to potential bias of the self-interested private party seeking the levy, thereby, allowing private parties to "make use of state procedures with the overt, significant assistance of state officials," that involve state action "substantial enough to implicate the Due Process Clause." Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 486 (1988).

Article III of the constitution and the Separation of Powers Doctrine allows only judges to sign judicial orders. The administration may not usurp judicial

power by instructing a court clerk to use a rubber stamp to imprint a judge's signature on a judicial order, such as the Gaither Road Charging Order, and judges may not delegate this power. For either the administrative usurping of the judicial powers, or its improper delegation, violates Article III and the Separation of Powers Doctrine, and the appeals court below failed to address this issue in any form. The administrative branch of government may not take over a function exclusively left to the judiciary under the U.S. Constitution. Nor may the judiciary delegate their judicial powers to an administrative court clerk. No statute or rule enacted by the Maryland Legislature authorizes court clerks to sign partnership charging or other Court Orders using a rubber stamp bearing a judicial signature. To so allow, would upset the balance of power, which makes our constitution work.

By filing the Note, instead of the Trust Deed, in violation of the rules, the attorney/trustee was able to launch a self confessed judgment of $4,000,000.00 without going through a foreclosure proceeding as the trust deed called for. The Petitioner lost his entire

fortune to the teamwork of the attorney/trustee and the court clerks. No judge was ever involved in this "consent judgment". No hearing was ever held on any of the above issues.

The Gaither Road and other similarly rubber-stamped charging orders, garnishing Petitioner's partnership property provided no due process to the debtor of his right to a hearing, which makes these orders unconstitutional, and in violation of the Petitioner's rights under the 14th Amendment's Due Process Clause; the Equal Protection Clause, and Article III of the Constitution. To the Court of Special Appeals, the rubber-stamped garnishment order was not even an "irregularities", which is clear error. This is a process and procedure violation sufficient to open the "confessed judgment" complaint and it is not extinguished by time or the alleged "consent judgment".

It remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another. The lawmaking function belongs to congress, U.S. Conts., Art. I, Section(s) 1, and may not be conveyed to

another branch or entity. Field v. Clark, 143 U.S.649, 692 (1892),. The judicial function belongs to judges and may not be delegated, or usurped by court administrative clerks. Artice III, 1, provides that the "judicial Power....shall be vested in one Supreme Court, and in such inferior Courts as the Congress may ...establish." Further, 2 mandates that the "judicial Power shall extend to all Cases...arising under this Constitution. The ultimate purpose of this separation of powers is to protect the liberty and security of the governed. As former Attorney General Levi explained:

"The essence of the separation of powers concept formulated by the Founders from the political experience and philosophy of the revolutionary era is that each branch, in different ways, within the sphere of its defined powers, is essential to the liberty and security of the people. Each branch, in its own way, is the peoples agent, its fiduciary for certain purposes.....

Fiduciaries do not meet their obligations by arrogating to themselves the distinct duties of their master's other agents" Levi, Some Aspects of

Separation of Powers, 76 Colum. L.Rev. 385-386 (1976)

As the Supreme Court said in AIRPORTS AUTH. V. CITIZENS FOR NOISE ABATEMENT, 501 U.S. 252 (1991) 01 U.S. 252:

..."**As we stated** in Buckley v. Valeo, 424 U.S. 1, (1976), **the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.** Id., at 122. **We have not hesitated to invalidate provisions of law which violate this principle."** See id., at 123." Morrison v. Olson, 487 U.S. 654, 693 (1988).

Certiorari is necessary to address this issue and possibly redress and stop further injury. The Partnership Charging Orders are still being employed by Respondent to garnish Petitioner's partnership property even though he was forced into bankruptcy. Duke Power Co. v. Carolina Environmental Study Group, Inc. 438 U.S. 59, 79. Pp. 935-936.

Petitioner, after moving to vacate the confessed judgment in 2001, after learning of the fraudulent

concealment of his due process notice rights and court errors concerning them, was entitled to a hearing on the Motion to Strike, and to open the "judgment". The courts order of April 4, 2001, to strike, should be reversed. The court arbitrarily and capriciously deprived Petitioner of his rights, and rendered a decision without benefit of the full record. The Points and Authorities were separated from the file, by the clerk, and kept in the evidence room until Petitioner filed notice of appeal. This conduct shows partiality. Petitioner was deprived of his 14th.

So too, when the court initially dismissed the Motion to Vacate and Set Aside the "confessed Judgment", ruling that jurisdiction lay in the Bankruptcy Court, knowing the Petitioner had been discharged in bankruptcy. The court arbitrarily and capriciously caused the Petitioner additional delay and expense in an improper manner. This showed partiality, and abridged Petitioner's 14th Amendment liberty rights to a fair and impartial judiciary. The subsequent granting of the order for a hearing does not cure this evil (this hearing was later denied).

The fact neither the Circuit Court nor the Court of

Special Appeals seems to be willing to address the issue that a court clerk is able to exercise judicial power, by signing a judicial order garnishing Petitioner's property on behalf of a judgment creditor, without providing the debtor due process notice of his right to a hearing, and allowing direct levy on the partnership by the judgment creditor, is a fundamental and important policy issue. It means the judiciary is not only willing to delegate, or abrogate their judicial power to court clerks, but it also means that judgment creditors can routinely use the power of the court system improperly, and in violation of the debtor's due process constitutional rights. This not only abridges the Separation of Powers Doctrine and Article III of the Constitution, but it also means that the court is being used by judgment creditors as a tool to allow them to garnish a debtors property in violation of the debtor's protected 5th and 14th Amendment Constitutional property interests and rights.

It means, as well, that either the administrative body of the state court, through its clerk, are usurping judicial power in violation of Article III of the United

States Constitution and the Separation of Powers Doctrine on their own initiative, or this power is improperly being delegated to them by circuit court judges in violation of the judge's powers under the Constitution, which exceeds the scope of judicial power, and upsets the balance of power.

Docket entry # 4 says the clerk issued to Respondent's attorney, "notices". The lack of a return of service proves these "notices" were never served on Petitioner. Fraud can be implied from this. Notice of the right to move to vacate and set aside the confessed judgment, was concealed from Petitioner, by Respondent's attorney, for financial gain, and the high stakes of a $600,000.00 attorney fee. Had the Trust Deed been filed with the confessed judgment, which was required to be filed, instead of the Trust Note, it would have disclosed the vast difference in fees to the attorney/trustee. $600,000.00 v. $250.00. Concealment by Respondent of Petitioner's notice of his right to answer and defend is extrinsic fraud. It prevents an adversarial trial from taking place under Fleisher v. Fleisher, Co., 60 Md. App. 565, 571 (1984) as quoted by the appellate court below. It is the very

kind of thing that the court below should allow the trial court to open and vacate a confessed judgment. Yet the court below, found no extrinsic fraud existed, a misreading of the material facts in this case, which is error. Even an appellate opinion must be supported by the facts.

Instead, the Court of Special Appeals simply focused too narrowly on the revisory power of a trial court over enrolled judgments, saying "....[the] revisory power is a matter of public policy derived from a need to have judgments that are final." In its narrow view, the court failed to think about what a confessed judgment is. It is enrolled thirty days after filing automatically, unless the debtor moves to set it aside. In order to do so, a debtor has to have notice of his right to do so. As the record shows, that did not happen here.

The Petitioner respectfully submits that this Court has only to look at the record, Docket numbers 1 through 29, to see that the lower courts erred. Sincere logical intellect, sense of justice, equity, and constitutional requirements for Due Process, should command the votes necessary for certiorari. Because

of errors and omissions the appeals court below rendered its decision incorrectly and incompletely. These Due Process, Equal Protection, Separation of Powers of Article III, and Article I constitutional issues need a full, fair, and just opinion. They are important policy issues affecting all Maryland citizens who become judgment debtors subject to having their property garnished by a judgment creditor through the court system.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court issue a writ of certiorari in this case. In the alternative, the Petitioner requests this Court to summarily reverse the appeals court decision and remand this case to the Prince Georges County Circuit Court in Maryland for a full and fair hearing.

Respectfully submitted,

Robert H. Keeler, pro se
P.O. Box 1736,
West Bethesda, Md. 20817
(202) 390-1500

App. A

*

APPENDIX TABLE OF CONTENTS

ORDER OF THE MARYLAND COURT OF APPEALS.....App. B

UNREPORTED JUDGMENT OF THE COURT OF SPECIAL APPEALS OF MARYLAND.....App. C

ORDER OF JUDGE NELSON W. RUPP, JR. IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, MARYLAND.....app. 10

App. B

SARATOGA DEVELOPMENT CORPORATION et al.	*	**IN THE COURT OF APPEALS OF MARYLAND**
v.	*	**Petition Docket No. 619 September Term 2001**
ACADEMY OF AMERICAN FRANCISCAN HISTORY, INC.	*	**No. 2960, Sept. 2000 Court of**

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, in the above entitiled case, it is

ORDERED, by the court of appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

Judge Harrel did not participate in the consideration of this matter.

DATE: March 8, 2002 Seal: MARYLAND

App. C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2960

September Term, 2000

SARATOGA DEVELOPMENT CORPORATION

et al.

v.

ACADEMY OF AMERICAN

FRANCISCAN HISTORY, INC.

Hollander,

Eyler, James R.,

Sonner

JJ.

Opinion by Eyler, James R., J.

Filed: November 27, 2001

#49199

App. D

In 1989, Saratoga Developemnt Corporation, appellant, (1) purchased 14 acres of residential land for a price of $7.75 million. Of that amount, $3.75 million was paid in cash, and a confessed judgment note in the amount of $4 million was given by Saratoga Development Corporation and Robert H. Keeler, its president and another appellant, to the Academy of American Franciscan History, Inc., appellee. The confessed judgment note was secured by a deed of trust.

After appellants defaulted on the note, a confessed judgment was entered against them in the Circuit Court for Montgomery County. The judgment was entered on October 17, 1989, in the amount of $4 million, plus $600,000 for attorney's fees. The attorney's fees portion was subsequently vacated. Appellee engaged in various efforts to collect the judgment. On January 22, 1990, by stipulation of the parties, a judgment was entered in the amount of a $4 million principal, plus interest, against appellants in favor of the appellee. The parties also stipulated to

(1) The notices of appeal were filed on behalf of Saratoga Development Corporation and Robert H. Keeler. The only brief filed on behalf of appellants,

attorney's fees in the amount of $400,000. Again, appellee engaged in various efforts to collect the judgment.

On January 17, 2001, appellants filed a petition to open the confessed judgment. The circuit court denied the motion, and on March 7, 2001, Appellants filed a motion for reconsideration. Appellee filed a motion to strike appellants' motion. Appellee's motion was granted, and appellants noted an appeal to this Court.

Discussion

Appellants contend that the circuit court erred in not permitting appellants to open the confessed judgment entered in 1989. Appellants, in the circuit court and on appeal, argue that the judgment should be opened because (1) the court lacked subject matter jurisdiction, (2) the court lacked in *personam* jurisdiction, (3) appellants did not receive proper notice in violation of the Maryland Rules and in violation of due process, (4) fraud, (5) irregularitites

however, was filed by Robert H. Keeler, appearing pro se. Nevertheless, we shall treat Saratoga Development Corporation as an appellant

in court process, and (6) a violation of appellants' equal protection rights.

Appellants explain that the original complaint for confessed judgment was not in the form required by Maryland Rule 2-611; that appellants received no notice of the right to petition to open the confessed judgment as required by Rule 2-611; that no return of affidavits of service of process were filed; and charging orders and writs of execution that were subsequently issued were defective. With respect to the equal protection argument, appellants point out that Rule 3-611(f) provides that a certificate must be filed by, or on behalf of, the plaintiff certifying that the instrument authorizing the confession of judgment was not executed by a buyer under the Retail Installment Sales Act, Md. Code, Commercial Law, sections 12-601 through 12-636, but that no similar requirement similar requirement exists in Rule 2-611. Appellants conclude that this provides "District Court debtors protection not afforded similar Circuit Court persons" and without any rational basis for the distinction. It is difficult to discern the basis for appellant's fraud allegation, but

Robert H. Keeler states, in his brief, that when appellee attached appellants' property, appellee stated that Mr. Keeler was a maker of the confessed judgment note, whereas he was only a guarantor.

Appellee contends (1) that the appeal should be dismissed for failure to comply with the appellate rules of procedure, and (2) appellants' claims are barred by *res judicata*.

With respect to appellee's first contention, appellants' brief and the record extract are not in strict compliance with the applicable rules. Nevertheless, we exercise our discretion and decline to dismiss the appeal on that basis.

With respect to the merits, however, appellants present a non-starter. Most of appellants' claims, whatever merit may have existed twelve years ago, at the present are governed by Maryland Rule 2-535(b).[2] During that twelve-year period, the time elapsed for attacking the confessed judgment; the judgment was converted to a consent judgment; appellee's

(2) Rule 2-535 addresses a court's revisory power over entered judgments, and 2- 535(b) reads, "[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."

efforts to collect the judgment and the resultant issues between the parties were frequently litigated in circuit court and appealed to this court on two prior occasions. See Keeler v. Academy of American Franciscan History, Inc. No. 1488, Sept. Term, 1998 (filed June 8, 1999, and Academy of American Franciscan history, Inc. v. Keeler, No. 632, Sept. Term, 1992 (filed Dec. 17, 1992). The underlying judgment was never attacked by appellants in any of those proceedings.

The extent of a trial court's power to revise a judgment more than thirty days after its entry is controlled by Maryland Rule 2-535. Meyer v. Gyro Transport Systems, Inc. 263 Md. 518, 527 (1971). The fraud, mistake, or irregularity allegedly used to obtain a judgment must be shown by clear and convincing evidence, and the party making the allegation must demonstrate that it acted with ordinary diligence, in good faith, and that it has a meritorious defense of cause of action. Tandra S. v. Tyrone W., 336 Md. 303, 314 (1994).

The court's authority is further limited by a narrow definition and strict application of the phrase "fraud, mistake, or irregularity." Early v. Early, 338 Md. 639, 652 (1995). "Irregularity is limited to the failure to follow required process or procedure. Early, 338 Md. at 652. "[M]istake" is confined to those instances where jurisdictional mistakes are involved. Clairbourne v. Willis, 347 Md. 684, 692 (1997).

With regard to "fraud," in Venables v. Ayers, 54 Md. App. 520, 531 (1983), this Court held that where the alleged fraud is "intrinsic" to the trial of the case itself, such as forged documents or perjured

testimony, the fraud cannot serve as a basis for vacating an enrolled decree. The only fraud sufficient to revise and enrolled decree is "extrinsic" fraud, since this type of fraud actually prevents an adversarial trial from taking place. See Fleisher v. Fleisher Co., 60 Md. App. 565, 571 (1984).

The strict limits placed on the circuit court's revisory power is a matter of public policy derived from the need to have judgments that are final. Tandra S., 336 Md. At 314.

In the Case before us, there is no showing of extrinsic fraud, no showing of mistake, and no showing of irregularity that, if ever existed, was not cured by the consent judgment.

JUDGEMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

App. J

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ACADEMY OF AMERICAN FRANCISCAN HISTORY, INC.,

Plaintiff

v.

Civil Action No. 49199

SARATOGA DEVELOPMENT CORPORATION,

Defendant

ROBERT H. KEELER,

Defendant

ORDER

Upon consideration of the Petitioner's Motion to Reconsider Dismissal (Tab 110), an examination of the docket entries and pleadings herein, Plaintiff's Motion to Strike (Tab 111), and the Opposition with supporting documents filed thereto (Tab 112), it is this 4 day of April, 2001 by the Circuit Court for Montgomery County, Maryland,

ORDERED, that the Palintiff's Motion to Strike is hereby **GRANTED**; and it is further

ORDERED, that the Motion to Reconsider Dismissal that was filed on January 29, 2001 is hereby stricken from the record.

Nelson W. Rupp, Jr., Judge
Circuit Court for
Montgomery County,
Maryland